86 - 1175

No. _____

Supreme Court, U.S.
FILED
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JOSEPH F. SPANIOL, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

EDDIE THOMPSON, JR.,
Petitioner-Appellant,

v.

ROBERT F. STEPHENS, Chief Justice, Ky. Supreme Court, RAYMOND LAPE, JR., Judge, 6th Region, JAMES GILLIECE, DANIEL GOODENOUGH, DOUGLAS STEPHENS, KENTON Circuit Judges, JAMES GODSEY, District Judge, JOHN ELFERS and MICHAEL HAMMONS,
Respondents-Appellees.

ON APPEAL FROM THE KENTUCKY SUPREME COURT

JURISDICTIONAL STATEMENT — CIVIL

CERTIFICATION:

I hereby certify that a copy of the foregoing Jurisdictional Statement has been served upon: Mr. David L. Armstrong, Attorney General, and Mr. Nathan Goldman, Assistant Attorney General, 120 State Capitol, Frankfort, Kentucky 40601-3494; Mr. Martin J. Huelsmann, 88 Thompson Avenue, Ft. Mitchell, Kentucky 41017; Hon. Raymond Lape, Jr., and Hon. Daniel Goodenough, Kenton Circuit Court, and Mr. Michael Hammons, 308 Greenup Street, all of Covington, Kentucky 41011, this 12th day of January, 1987.

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QUESTIONS PRESENTED

I. Is Regional Administration Program Charter, promulgated pursuant to Constitutional and Statutory provisions of Kentucky, which permits violation of the one man, one vote rule, valid? U. S. Constitution, Article I, Section 1, Article III, Sections 1 and 2, Article VI, First and Fourteenth Amendments.

II. Does the one man, one vote rule apply to the Kentucky Judicial Circuits and District Courts? Kentucky Constitution Sections 110, 111, 112, 113, 117.

III. Is Mandamus the appropriate remedy to compel the County Attorney to perform his duty in an ethical manner according to State Law K.R.S. 387.560? p. 5.

IV. Is the Kentucky Supreme Court obligated to investigate undenied allegations of unethical conduct by attorneys? Kentucky Constitution, Section 116.

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In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

No. _____

EDDIE THOMPSON, JR.,
Petitioner-Appellant,

v.

ROBERT F. STEPHENS, Chief Justice, Ky. Supreme Court, RAYMOND LAPE, JR., Judge, 6th Region, JAMES GILLIECE, DANIEL GOODENOUGH, DOUGLAS STEPHENS, KENTON Circuit Judges, JAMES GODSEY, District Judge, JOHN ELFERS and MICHAEL HAMMONS,
Respondents-Appellees.

JURISDICTIONAL STATEMENT — CIVIL

OPINION

Appellant, Eddie Thompson, Jr., appeals from the Final Order of the Kentucky Supreme Court, entered on October 16, 1986. App. p. 1a

JURISDICTION

The Kentucky Supreme Court summarily dismissed Appellant's Petition for a Writ of Mandamus and/or Prohibition on October 16, 1986. (App. p. 1a) Said Order, inter alia, held as valid an "Order", adopting Regional Administration Program Charter and "Charter" (App. p. 32a), promulgated pursuant to Sections 110(5)(b) and 112(4) of the Kentucky Constitution.

K.R.S. 27A.010, K.R.S. 27A.020, and K.R.S. 27A.050 enacted pursuant to Section 110(5)(b) of the Kentucky Con-

stitution and purporting to convey anarchy powers to the Kentucky Chief Justice were also held valid.

A timely Notice of Appeal to this court was filed on November 11, 1986. (App. p. 2a) Jurisdiction of this Court is conferred by 28 U.S.C. 1257(2). The following decisions sustain the jurisdiction of this Court to review the Judgment of the Kentucky Supreme Court. *Fiske* v. *Kansas*, 274 U.S. 380, *Marcus* v. *Search Warrant*, 376 U.S. 717, *In Re: Griffiths*, 413 U.S. 717, *Fisher* v. *District Court*, 424 U.S. 382.

If this Court concludes that Appeal is not the appropriate remedy, Appellant desires this Court to consider these papers as a Petition for Certiorari. 28 U.S.C. 1257(3), *Youngstown* v. *Sawyer*, 343 U.S. 579, *Madruga* v. *Superior Court*, 346 U.S. 556, *In Re: Murchison*, 349 U.S. 133, *Richmond Newspapers, Inc.* v. *Virginia*, 448 U.S. 555.

CONSTITUTIONAL PROVISIONS INVOLVED — KY

The Judicial Department

Section 109. The Judicial Power — Unified System — Impeachment

The Judicial Power of the Commonwealth shall be vested exclusively in one court of justices which shall be divided into a Supreme Court, a Court of Appeals, a Trial Court of General Jurisdiction known as the Circuit Court and a Trial Court of limited jurisdiction known as the District Court. The court shall constitute a unified judicial system for operation and administration. The impeachment powers of the general assembly shall remain inviolate.

The Supreme Court

Section 110. Composition — Jurisdiction — Quorum — Special Justices — Districts — Chief Justice

(1) The Supreme Court shall consist of the Chief Justice of the Commonwealth and six associate justices.

(2)(a) The Supreme Court shall have appellate jurisdiction only, except it shall have the power to issue all writs necessary in aid of its appellate jurisdiction, or the complete determination of any cause, or as may be required to exercise control of the court of justice.

(2)(b) Appeals from a judgment of the circuit court imposing a sentence of death or life imprisonment or imprisonment for twenty years or more shall be taken directly to the Supreme Court. In all other cases, criminal and civil, the Supreme Court shall exercise appellate jurisdiction as provided by its rules.

(3) A majority of the justices of the Supreme Court shall constitute a quorum for the transaction of business. If as many as two justices decline or are unable to sit in a trial of any cause, the Chief Justice shall certify that fact to the Governor, who shall appoint to try the particular cause a sufficient number of justices to constitute a full court for the trial of the cause.

(4) The Court of Appeals districts existing on the effective date of this Amendment to the Constitution shall constitute the initial Supreme Court districts. The general assembly thereafter may redistrict the Commonwealth by counties, into seven Supreme Court Districts as nearly equal in population and as compact in form as possible. There shall be one Justice from each Supreme Court District.

(5)(a) The Justices of the Supreme Court shall elect one of their number to serve as Chief Justice for a term of four years.

(5)(b) The Chief Justice of the Commonwealth shall be the executive head of the court of justice and he shall appoint such administrative assistants as he deems necessary. He shall assign temporarily any justice of judge of the Commonwealth, active or retired, to sit in any court other than the Supreme Court when he deems such assignment necessary for the prompt disposition of causes. The Chief shall submit the budget for the court of justice and perform all other necessary administrative functions relating to the court.

The Court of Appeals

Section 111. Composition — Jurisdiction — Administration — Panels

(1) The Court of Appeals shall consist initially of fourteen judges, an equal number to be selected from each Supreme Court district. The number of judges thereafter shall be determined from time to time by the general assembly upon certification of necessity by the Supreme Court.

(2) The Court of Appeals shall have appellate jurisdiction only, except that it may be authorized by Rules of the Supreme Court to review directly decisions of administrative agencies of the Commonwealth, and it may issue all writs necessary in aid of its appellate jurisdiction, or the complete determination of any cause within its appellate jurisdiction. In all other cases, it shall exercise appellate jurisdiction as provided by law.

(3) The judges of the Court of Appeals shall elect one of their number to serve as Chief Judge for a term of four years. The Chief Judge shall exercise such authority and perform such duties in the administration of the Court of Appeals as are prescribed in this section or as may be prescribed by the Supreme Court.

(4) The Court of Appeals shall divide itself into a panel of not less than three judges. A panel may decide a cause by the concurring vote of a majority of its judges. The Chief Judge shall make assignments of judges to panels. The Court of Appeals shall prescribe the times and places in the Commonwealth at which each panel shall sit.

The Circuit Court

Section 112. Location — Circuits — Composition — Administration — Jurisdiction

(1) Circuit Court shall be held in each county.

(2) The Circuit Court districts existing on the effective

date of this Amendment to the Constitution shall continue under the name "Judicial Circuits," the general assembly having power upon certification of the necessity therefor by the Supreme Court to reduce, increase or rearrange the Judicial districts. A Judicial Circuit composed of more than one county shall be as compact in form as possible and as contiguous counties. No county shall be divided in creating a Judicial Circuit.

(3) The number of Circuit Judges in each district existing on the effective date of this Amendment shall continue, the general assembly having power upon certification of the necessity therefor by the Supreme Court, to change the number of circuit Judges in any Judicial Circuit.

(4) In a Judicial Circuit having only one judge, he shall be the Chief Judge. In Judicial Circuits having two or more judges, they shall select biennially a Chief Judge, and if they fail to do so within a reasonable time, the Supreme Court shall designate the Chief Judge. The Chief Judge shall exercise such authority and perform such duties in the administration of his Judicial Circuit as may be prescribed by the Supreme Court. The Supreme Court may provide by Rules for Administration of Judicial Circuits by *Regions* designated by it.

(5) The Circuit Court shall have original jurisdiction of all justifiable causes not vested in some other court. It shall have such appellate jurisdiction as may be provided by law.

Section 116. Rules Governing Jurisdiction, Personnel, Procedure, Bar Membership.

The Supreme Court shall have the power to prescribe rules governing its appellate jurisdiction, rules for the appointment of Commissioners and other court personnel, and rules of practice and procedure for the Court of Justice. The Supreme Court shall, by Rule, govern admission to the Bar and the discipline of members of the Bar.

Section 117. Election.

Justices of the Supreme Court and Judges of the Court of Appeals, Circuit and District Court shall be elected from their respective districts or circuits on a nonpartisan basis as provided by law.

CONSTITUTIONAL PROVISIONS (Cont.)

Federal

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STATUTORY PROVISIONS

Federal

28 U.S.C. 1257(2) Final Judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court as follows:

(2) By appeal, where is drawn in question the validity of a statute of any state on grounds of it being repungnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity.

28 U.S.C. 1257(3) By Writ of Certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a state statute is drawn in question on the ground of it being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties, or statutes, or commissions held or authority exercised under the United States.

State

K.R.S. 387.560(3) In all proceedings under K.R.S. 387.500 to 387.770, it shall be the duty of the County Attorney to assist the Petitioner, to represent the interest of the Commonwealth, and to assist in its inquiry by the presentation of evidence.

K.R.S. 23A.200 Jury fees shall be assessed as costs and shall be paid to the clerk at the disposition of the action by the party against whom the costs have been assessed as follows: (a) For a jury of more than 6 persons $25.00, (b) For a jury of six persons $12.50.

K.R.S. 24A.170(4) The jury fee shall be assessed as costs and shall be paid to the clerk by the party against whom the costs have been assessed as follows: For a jury of six (6) persons $12.50.

Administrative Rule of Court

Rule 35(1) As provided in K.R.S. 23A.200 and 24A.170, the jury fee for civil cases in circuit court is $25.00 for a jury of more than six (6) persons, and $12.50 for a jury of six (6) persons, the jury fee in the District Court is $12.50.

(2) The jury fee in civil cases shall be paid at the time the request for a jury trial is made, and shall be paid by the party making the request.

STATEMENT OF FACTS

The instant proceeding was instituted by Appellant, inter alia, to challenge the validity of the Kentucky Supreme Court's "Order" adopting the Regional Administration Program Charter, and the "Charter" enacted pursuant to Kentucky Constitutional Provisions, Sections 110(5)(b) and 112(4).

The Regional Administration Program Charter is not mentioned in the Kentucky Constitution, Sections 110(5)(b), 112(4) or K.R.S. 27A.010, K.R.S. 27A.020, K.R.S. 27A.050. Said Order, Charter, Constitutional and Statutory Provisions are in violation of the U.S. Constitution, Article I, Section 1, Article III, Sections 1 and 2, Article VI, the First and Fourteenth Amendment, as they are applied in the instant proceedings.

Aforesaid Order, Charter, Constitutional and Statutory Provisions of Kentucky, inter alia, permit: (1) A circuit or District Judge elected in one Judicial Circuit or District to appoint a Circuit or District Judge elected in another Judicial Circuit or District as a Special Judge in several Judicial Circuits or Districts, none of which he is elected in. (2) Judges who have voluntarily disqualified themselves pursuant to State Law (K.R.S. 26A.015) to make rulings in cases after they have disqualified themselves. (3) The Kenton County Attorney, Mr. John Elfers, to cause illegal criminal summons and/or warrants to issue, at will (no charges pending). (4) Court functionaries to promulgate administrative Rules of the Court that conflict with valid statutes of Kentucky. e.g. Rule 35 of Administrative Procedure conflicts with K.R.S. 23A.200 and 24A.170(4). (That issue was presented in 85-152 *Thompson* v. *First National Bank and Trust*.)

Appellant filed a Petition in the Kenton District Court to determine if his (Appellant's) Father was disabled pursuant to K.R.S. 387.500, etc. Mr. John Elfers, Kenton County Attorney, who at the time was representing Appellant's Father, as an attorney, and was acting as counsel for Plaintiff in a

lawsuit *against* Appellant's Father, caused the trial to determine Appellant's Father's disability to be fraudulently conducted, 85-H-079 (App. p. 9a). Appellant appealed the fraudulently conducted trial to the Kenton Circuit Court (85-X-61). At that point, Mr. John Elfers as the Kenton County Attorney, caused a motion to be filed to dismiss the Commonwealth as a party to the disability proceeding (85-X-61) even though the Commonwealth was not a party. After a hearing on the motion, the Honorable Judge Goodenough (who heard the motion) and the other three (3) Kenton Circuit Judges (Honorable Judges Lape, Gilliece, and Stephens) voluntarily disqualified themselves pursuant to K.R.S. 26A.015. None of the four (4) judges gave any reason(s) for their disqualification. In an Order signed by the Hon. Judge Lape (App. p. 26a), acting as Chief Regional Judge pursuant to an "Order" adopting a Regional Administration Program Charter, and "Charter", Hon. Judge Lape (16th Judicial Circuit) appointed Hon. Judge Neace (54th Judicial Circuit) as Special Judge.

Appellant, by letter, requested the Kentucky Chief Justice Stephens to appoint a Special Judge as required by Ky. State Law (App. p. 27a), and informed the Kentucky Chief Justice of the fraud being practiced upon Appellant in the Kenton District/Circuit Courts. (App. p. 28a)

In response to the Petition for a Writ of Mandamus and/or Prohibition, no one has denied the alleged fraud practiced upon the Court and Appellant, or suggested that the "Order" adopting Regional Administration Program Charter, "Charter", Constitutional or Statutory Provisions are constitutional. The Assistant Kentucky Attorney General said, in response to the Petition (App. p. 39a) . . . "In response to the merits of the petition, the Regional Administration Program adopted by this Court allows the chief regional judge to appoint a special judge when needed. In petitioner's case at the Kenton Circuit Court, all four circuit judges recused themselves. Thereafter, the chief regional judge, the Hon. Raymond Lape, Jr., designated the Hon. Samuel Neace,

Boone Circuit Judge (54th Judicial Circuit) as special judge. Kenton Circuit (16th Judicial Circuit) and Boone Circuit (54th Judicial Circuit) are both in the Sixth Region. Judge Lape's appointment of Judge Neace was entirely consistent with Section V of the Regional Administration Program Charter. On October 18, 1983, the chief justice of this Court entered an order adopting the Regional Administration Program Charter. Section 110 of the Kentucky Constitution designates the chief justice as the executive head of the Court of Justice and requires him to perform all necessary administrative functions relating to the court. Adoption of the Regional Administration Program Charter was within the constitutional authority of the chief justice. Consequently the petition fails on the merits." (App. p. 40a)

THE QUESTIONS ARE SUBSTANTIAL

At the threshold, we are confronted with the question: What is the "Order" adopting the Regional Administration Program Charter or the "Charter" itself? (App. p. 32a) Is it legislation? Is it an Administrative Rule or Charter? Accepting it as either, could it permit judges elected in one judicial circuit or district to arbitrarily appoint circuit or district judges elected in another judicial circuit or district as special judges, in violation of the one man, one vote rule?

When a court reviews . . . . a construction of the statute which it administers, it is confronted with two questions. First, always, is the question of whether Congress (legislators) has directly spoken to the precise question at issue. If the intent of Congress (legislators) is clear, that is the end of the matter for the court . . . . If, however, the court determines Congress (legislators) has not directly addressed the precise question at issue, the court does not simply impose its own construction on the statute. *Chevron USA* v. *Natural Resources Defense Council*, 467 US 837, 81 LEd 2d 694 104 SCt 2778.

The judiciary can only inquire whether the means devised

by Congress (legislators) in the execution of a power granted are forbidden by the Constitution. *Interstate Commerce Commission* v. *Brimson*, 38 LEd 1047.

The essence of our free government is, "Leave to live by no man's leave, under the law" . . . to be governed by those impersonal forces we call law. Our government . . . . is fashioned to fulfill this concept so far as humanly possible . . . . With all its defects, delays and inconveniences, men have discovered no technique for long preserving free government except that . . . (those appointed or elected) . . . be under the law, and that the law be made by parliamentary deliberations. Such institutions may be destined to pass away, but it is the duty of the court to be last, not first, to give them up. *Youngstown*, *Supra*, 343 U.S. 579, 654.

Our situation is analogous to the Kentucky Supreme Court and/or its Chief Justice having power to enact the death penalty in Kentucky.

A clear mandate from the State Legislation is necessary first, then the courts may pass upon the validity of said statute.

Ultimately, if challenged, the State Court's decision would be subject to review by the U.S. Supreme Court. No less clear a mandate can be expected from legislator to authorize the Kentucky Supreme Court or its Chief Justice to enact "Region Administration Program Charter." Of course, its decision would be subject to review by the U.S. Supreme Court.

Legislative silence is not tantamount to acquiescence in the administrative construction of a statute where there is no indication that the legislature has addressed itself to the particular problem. *Zuber* v. *Allen*, 396 U.S. 168.

The North Carolina Supreme Court was faced with a problem similar to ours. That Court said, "Advisory opinions of individual members of Supreme Court are only opinions of individual members and not of Court itself, and do not and cannot have force of law; while such advisory opinion may be

persuasive authority for points of law addressed, they are in no sense binding or obligatory on those points." *In Re: Advisory Opinion*, 335 S.E. 2d 890 (1985).

State Supreme Courts are obligated to uphold Constitution irrespective of State Statute. U.S. Constitution, Article VI, *Wine Journal inc.* v. *State Liquor*, 368 NYS 2d 366, Affirmed 371 NYS 2d 1002.

While congress (legislator) has an obligation to enact legislation it deems to be constitutional, its determination that a particular statute is constitutional does not foreclose or relieve a court from conducting its own analysis of the issue. *Armstrong* v. *U.S.*, 759 F 2d 1378, 1380.

Constitutional limitations can be preserved in practice only through mediums of court of justice, whose duty it must be to declare all acts contrary to manifest of construction void. *U.S.* v. *Brown*, 381 U.S. 437.

The construction of constitutional and/or statutory enactment of a State Supreme Court are binding upon this court. *Fiske* v. *Kansas*, 274 U.S. 380.

In determining constitutionality of proposed plan for legislative reapportionment or apportionment, Federal courts will not give credence to a plan predicated on an at large scheme of representation. *Baker* v. *Carr*, 369 U.S. 186; *Avery* v. *Midland County*, 390 U.S. 474; *Hadley* v. *Junior College District*, 397 U.S. 50.

A State Supreme Court's judgment finally disposing of a writ of prohibition by denying the writ is a final judgment reviewable by the Supreme Court of the United States. *Madruga* v. *Superior Court*, 346 U.S. 556.

The Writ of Prohibition and Mandamus afford an expeditious and effective means of confining an inferior court to a lawful exercise of its authority when it is its duty to do so. *Ex parte Republic of Peru*, 318 U.S. 578.

A fair trial in a fair tribunal is a basic requirement of due

process. *In Re: Murchison*, 349 U.S. 133 . . . Its (trial) is a public event and what transpires in the court room is public property. *Craig* v. *Harney*, 331 U.S. 367 . . . The crucial prophylactic aspects of administration of justice cannot function in the dark; no community cartharsis can occur if justice is "done in a corner or in any covert manner." It is not enough to say result alone will satiate the natural community's desire for satisfaction. A result considered untoward may undermine public confidence, and where the trial has been concealed from public view an unexpected outcome can cause a reaction that the system at best has failed and at worse has been corrupted. To work effectively, it is important that society's . . . . process, "satisfy the appearance of justice." *Richmond Newspapers Inc.* v. *Virginia*, 448 U.S. 572.

Pursuant to Kentucky Constitution, Section 116, the Kentucky Supreme Court by Rule governs the disciple of members of the Bar. (p. 5) K.R.S. 387.560(3) provides the County Attorney shall (1) assist the petitioner, (2) represent the interest of the Commonwealth, and (3) assist by presentation of evidence.

When Appellant brought it to the attention of the Kentucky Supreme Court (App. p. 31a) that the County Attorney, Mr. Elfers, had committed fraud in the name of the Commonwealth, did the Court have a duty to cause the matter to be investigated? Should 4 Kenton Circuit judges who had voluntarily reclused themselves, after Appellant filed affidavit against the County Attorney, certify their reasons for disqualification?

There is no question that had Appellant sought to have the four (4) Kenton Circuit Judges recluse themselves, Appellant would have had to file 4 affidavits justifying removal of these Judges.

None of the attorneys, Mr. Elfers, or Mr. Hammons or Judge Godsey have denied that the proceeding before Judge Godsey was fraudulently conducted.

Conduct of an attorney should be above reproach. *In Re: Ryder*, 263 F Supp 360, *Affirmed* 381 F 2d 713.

Whenever an allegation is made that an attorney has violated his moral and ethical responsibility, an important question of professional ethics is raised, and it is the duty of the . . . . court to examine the charge, since it is the court which is authorized to supervise the conduct of the members of its Bar. *Richardson* v. *Hamilton International Corp.*, 469 F 2d 1382 (1972), Ky Constitution, Section 116.

Judgment obtained by fraud is nullity and may be attacked in any collateral proceeding. *Commonwealth* v. *Smith*, 46 S.W. 2d 474.

CONCLUSION

The questions presented by this Appeal are substantial and require plenary consideration by this Court for their resolution.

Respectfully submitted.

Eddie Thompson, Jr., Pro Se

APPENDIX

SUPREME COURT OF KENTUCKY

86-SC-750-OA

IN SUPREME COURT

EDDIE THOMPSON, JR.,

Petitioner,

v.

ROBERT F. STEPHENS, Chief Justice, Ky. Supreme Court, RAYMOND LAPE, JR., Judge, 6th Region, JAMES GILLIECE, DANIEL GOODENOUGH, DOUGLAS STEPHENS, Kenton Circuit Judges, JAMES GODSEY, District Judge, JOHN ELFERS and MICHAEL HAMMONS,

Respondents.

ORDER DISMISSING PETITION

The petitioner, Eddie Thompson, Jr., filed an original action in this Court on September 9, 1986 styled "Petition for Writ of Mandamus and/or Prohibition," in which he names as respondents, among others, the present Chief Justice of this Court, several Circuit Judges of the Kenton Circuit Court, and a District Judge of the Kenton District Court.

The Rules of Procedure of this Court do not authorize the filing of such an action in this Court. Accordingly, the relief requested by the petitioner is denied, and the petition is dismissed.

All concur, except Stephens, C.J., who did not sit.

ENTERED October 16, 1986.

/s/ DONALD C. WINTERSHEIMER
JUSTICE

SUPREME COURT OF KENTUCKY

86-SC-750-OA

EDDIE THOMPSON, JR.,

Appellant,

v.

ROBERT F. STEPHENS, Chief Justice, Ky. Supreme Court, RAYMOND LAPE, JR., Judge, 6th Region, JAMES GILLIECE, DANIEL GOODENOUGH, DOUGLAS STEPHENS, Kenton Circuit Judges, JAMES GODSEY, District Judge, JOHN ELFERS and MICHAEL HAMMONS,

Appellees.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Eddie Thompson, Jr., Appellant above named, hereby appeals to the Supreme Court of the United States from the Final Judgment of the Kentucky Supreme Court dismissing Appellant's petition entered in this action on October 16, 1986.

The Appeal is taken pursuant to 28 U.S.C. 1257 (1), (2).

/s/ EDDIE THOMPSON, JR., Pro Se
P.O. Box 1221
Covington, Kentucky 41012
(606) 491-6278

[CERTIFICATION OMITTED IN PRINTING]

KENTUCKY SUPREME COURT
FRANKFORT

No. 86-SC-750-OA

EDDIE THOMPSON, JR.,
P.O. Box 1221,
Covington, KY 41012,

Petitioner,

vs.

HON. ROBERT F. STEPHENS,
Chief Justice, Kentucky Supreme Court,
Frankfort, KY
HON. RAYMOND LAPE, JR.,
Chief Regional Judge, Sixth Region
HON. JAMES GILLIECE,
HON. DANIEL GOODENOUGH,
HON. RAYMOND LAPE, JR.,
HON. DOUGLAS STEPHENS,
Kenton Circuit Judges
HON. JAMES GODSEY,
District Judge
HON. DOUGLAS STEPHENS,
Former District Judge
HON. JOHN ELFERS,
Kenton County Attorney
HON. MICHAEL HAMMONS,
Respondents Attorney, 85-H-79,
All of Covington, KY 41012,

Respondents.

PETITION FOR WRIT OF MANDAMUS AND/OR PROHIBITION
(Filed September 9, 1986)

[CERTIFICATION OMITTED IN PRINTING]

[INDEX OMITTED IN PRINTING]

K.R.S. 26A.015(2) — Any Justice or Judge of the Court of Justice or Master Commissioner shall disqualify himself in any proceeding:

(a) where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary fact concerning the proceedings, or has expressed an opinion concerning the merits of the proceeding.

(3)(a) — Any Justice or Judge of the Court of Justice disqualified under the provisions of this section shall be replaced by the Chief Justice.

K.R.S. 27A.010 — Executive head of Court of Justice — In accordance with Section 110(5)(b) of the Constitution of Kentucky, the Chief Justice of the Commonwealth shall be the executive head of the Court of Justice and shall appoint such administrative assistants as he deems necessary.

K.R.S. 27A.020 — Chief Justice-Delegation of Functions — The Chief Justice in his sole discretion *may* delegate the following functions to the administrative director of the courts or to his administrative assistants:

(1) Perform administrative services for the Court of Justice and supervise its clerical and administrative personnel, and its accommodations;

(2) Act as fiscal officer of the Court of Justice and so doing shall . . . . .;

(3) Ascertain the necessity for assignment of Justice and Judges as contemplated by Section 110(5)(b) of the Constitution, make reports concerning their performance of duties and certify the compensation payable to them;

(4) Carry on a continuous survey and study of the organization, operation, condition of business, practice and procedure of the Court of Justice;

(5) Collect and compile statistical and other data concerning the operations of the courts and to this end may re-

quire all necessary reports from the courts and clerks thereof of this Commonwealth relating to rules, dockets, and business dispatched or pending in such courts;

(6) Formulate and submit to the Supreme Court recommendations of policies for the improvement of the Court of Justice;

(7) Provide the educational programs for the members of the Court of Justice;

(8) Report to the general assembly concerning the work of the Court of Justice and make such recommendations for the improvement of administration of justice as deemed necessary and proper.

(9) Supervise, operate, and administer all pretrial release programs and personnel which come within the purview of the Court of Justice, or which are related thereto;

(10) Perform such other functions as may be assigned by the Chief Justice.

27A.050 Administrative Office of the Courts — . . .

The Administrative Office of the courts is created to serve as the staff for the Chief Justice in executing the policies and programs of the Court of Justice. The director of the Administrative Office of the court shall serve at the pleasure of the Chief Justice. Provided, however, the director shall be appointed or reappointed at least every four (4) years with the advice and consent of the senate . . . .

U. S. Constitution Article I Section 1. All legislative powers herein granted shall be vested in a congress of the United States, which shall consist of a Senate and House of Representatives.

Article III Section 1. The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as congress may from time to time ordain and establish . . .

Section 2. . . . . The Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the congress shall make.

Article VI. This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all

treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the Judges in every state shall be bound thereby, any thing in the Constitution or laws of any state to the contrary notwithstanding.

U. S. Constitution — First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of people peaceably to assemble, and to petition the government for a redress of grievances.

U. S. Constitution — Fourteenth Amendment

. . . No state shall make or enforce any law which shall abridge the priviledge or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

KENTUCKY SUPREME COURT
FRANKFORT

No. _____

EDDIE THOMPSON, JR.,
P.O. Box 1221,
Covington, KY 41012,

Petitioner,

vs.

HON. ROBERT F. STEPHENS,
Chief Justice, Kentucky Supreme Court,
Frankfort, KY
HON. RAYMOND LAPE, JR.,
Chief Regional Judge, Sixth Region
HON. JAMES GILLIECE,
HON. DANIEL GOODENOUGH,
HON. RAYMOND LAPE, JR.,
HON. DOUGLAS STEPHENS,
Kenton Circuit Judges
HON. JAMES GODSEY,
District Judge
HON. DOUGLAS STEPHENS,
Former District Judge
HON. JOHN ELFERS,
Kenton County Attorney
HON. MICHAEL HAMMONS,
Respondents Attorney, 85-H-79,
All of Covington, KY 41012,

Respondents.

PETITION FOR WRIT OF MANDAMUS AND/OR PROHIBITION

Petitioner, pursuant to the provisions of Kentucky Civil

Rule 81, respectfully prays that this honorable court issue a writ of mandamus and/or prohibition directed to: (1) Respondent Hon. Robert F. Stephens, Chief Justice, to show cause, if there be any, why the relief prayed for herein, should not be granted; (2) Respondents Hon. Raymond Lape, Jr., Chief Regional Judge, Sixth Region, to show cause, if there by any, of how he can appoint a circuit judge of another judicial circuit as a special judge in violation of State Law (K.R.S. 26A.015), the Supremacy Clause, U.S. Constitution Article 6, and the 14th Amendment to the U. S. Constitution; (3) Respondents 4 Circuit Judges of Kenton Circuit Court to show cause if any, why they are exempt from State Law (K.R.S. 26A.015) and do not have to file Certificates of Disqualification; and (4) Respondent Hon. D. Stephens, Former Chief Judge, Kenton District Court, to show cause, if there by any, how the Kenton District Court can issue summons and collect and enforce judgments in cases it has no jurisdiction over (example, Judgment of District Court appealed to Circuit Court, Circuit Court dismissed appeal, no reason stated, and case not remanded back to the District Court, and other cases the District Court has no jurisdiction of).

As grounds therefor, Petitioner states as follows:

1. My Mother, Mallie Thompson, died intestate on November 14, 1968, a resident of Kenton County.

2. Mallie Thompson left surviving her as her only heirs at law, Eddie Thompson, Sr., her widower, and six children by their marriage: Eddie Thompson, Jr., Betty Thompson (now deceased), Walter Thompson (now deceased), Edward Thompson (now deceased), Rudy Thompson, and Jimmy Thompson.

3. Subsequently, my Dad, Eddie Thompson, Sr. (Executor De Son Tort) assumed and acted as administrator and performed acts with respect to the assets of the estate as could only be legal if properly appointed.

4. Because a number of designing individuals were attempting to steal the estate (Dad's attorney John Blakely and John Elfers included), on July 29, 1985, I filed a petition to

determine if my Dad, Eddie Thompson, Sr., was disabled (Kenton District Court No. 85-H-79).

5. At the time I filed the Petition, Mr. John Elfers was representing my Dad as an attorney and acting as counsel for plaintiff in a lawsuit against my Dad.

6. I filed a complaint with the Bar Association, which refused to investigate.

7. I then filed a complaint with Chief Justice Stephens. Ex. 1.

8. The Supreme Court governs the disciplining of members of Bar. Kentucky Constitution Sec. 116.

9. The Chief Justice neglected to do anything about my Complaint. Ex. 2.

10. Mr. John Elfers, acting in his official capacity as County Attorney, pursuant to K.R.S. 387.560(3) caused the trial of the proceeding (85-H-79) to be fraudulently conducted by not allowing the Interdisciplinary Team's Report to be presented at the trial and forcing Michael Hammons in the case as my Dad's attorney.

11. The tapes of the proceedings have been tampered with.

12. I appealed the fraudulently conducted trial to the Kenton Circuit Court, Case No. 85 X 61.

13. The case was assigned to the Hon. Judge Goodenough.

14. Thereafter, a Motion was heard by Hon. Judge Goodenough to dismiss the Commonwealth as a party to the proceeding, notwithstanding the fact that the Commonwealth was never a party to the action.

15. After the hearing on the Motion, the Hon. Judge Goodenough disqualified himself in 85 X 61 and 85-CI-1115, pursuant to K.R.S. 26A.015. Ex. 3 and 4.

16. The Order signed by Chief Regional Judge Raymond Lape, Jr. states ". . . It has been certified under K.R.S. 26A.015 that the Hon. Daniel J. Goodenough (all Judges) Regular Judge of the 16th Judicial Circuit is disqualified in the above-styled cause. Ex. 3 and 4.

17. The four Circuit Judges of the 16th Judicial Circuit are: Hon. Judge James Gilliece, Hon. Judge Daniel Goodenough, Hon. Judge Raymond Lape, and Hon. Judge Douglas Stephens.

18. These Judges are elected by legislative apportionment, (16th Judicial Circuit) Kentucky Constitution, Sec. 117.

19. K.R.S. 26A.015(3)(a) provides that any Justice of Judge of the Court of Justice disqualified under the provisions of this Section shall be replaced by the Chief Justice.

20. Even though the Hon. Judge Lape disqualified himself as a Regular Circuit Judge of the 16th Judicial Circuit, Judge Lape purporting to act as the Chief Regional Judge of the Sixth Region of Judicial Circuits (a legislative apportment district), designated the Hon. Samuel Neace, Regular Judge of the 54th Judicial Circuit to preside in this matter, pursuant to authority granted him by an Order signed by the Chief Justice of the Kentucky Supreme Court. Ex. 3 and 4. Ky. Const., Sec. 110(5)(b), 112(4), K.R.S. 27A.010, 27A.020, 27A.050.

21. The Kentucky Supreme Court, through the Administrative Office of the Court causes the Kenton Circuit and District Court to violate valid laws of this State by: (1) Forbidding that court to accept from me cases where trial by jury is requested, without prepayment of jury fee. *Thompson* v. *City of Covington*, 86-CI-1266; (2) Sanctioning the Kenton Circuit Court's approval of the Kenton District Court's illegally collecting of fines and penalties from me.

22. Cases 78-M-1186 and 78-M-2912 were appealed to the Circuit Court. The cases were never remanded back to the District Court; yet, the District Court illegally issued criminal summons to illegally take the fines.

23. Judge Lape knows Mr. Elfers is stealing the family's and my inheritance.

24. I wrote a letter of complaint to the Chief Justice. Ex. 5.

25. I was informed that the Chief justice does not communicate with potential litigants. Ex. 6.

26. I received no reply to my reply to this letter. Ex. 7.

27. The acts complained of herein are a violation of the Supremacy Clause of the U. S. Constitution VI and Article I, Sec. 1, 7, Article III, Sec. 1.2(a)(b); Article VI.

/s/ EDDIE THOMPSON, JR.

Subscribed and sworn to before me this 9th day of August 1986.

/s/ ISIAH SMITH

My Commission Expires: March 16, 1988.

Wherefore Petitioner prays that:

1. Hon. Robert F. Stephens disqualify himself for cause in this case. *In Re: Murchison*, 349 US 133, 136. * * *

2. The Kentucky Supreme Court set this matter for a hearing at its earliest convenience.

3. The Kentucky Supreme Court appoint a Special Judge in Kenton Circuit Court case 85 X 61.

4. Hon. Judge Lape cease and desist his activities as Chief Regional Judge, Sixth Region, because (he) the Judge is in violation of the Kentucky Constitution, Sec. 117; US Constitution Article VI, the 14th Amendment, and the one man, one vote rule. *Baker* v. *Carr*, 369 US 186.

5. All four Kenton Circuit Judges certify their reasons for disqualification in 85 X 61 according to State Law. K.R.S. 26A.015.

6. The Order adopting the Regional Administration program charter be declared null and void.

7. The Regional Administration program charter be declared null and void.

8. K.R.S. 27A.010, 27A.020, and 27A.050 be declared null and void.

9. So much of the Kentucky Constitution, Section 109 thru 124, that purports to unify inferior courts with the Kentucky Supreme Court and convey anarchy powers to the Chief Justice be declared null and void.

10. Mr. Elfers explain (1) when the Commonwealth became a party in 85-H-79, (2) how and why he was able to get the case continued twice, (3) why he had the psychiatrist summoned at the cost of $500 and did not let him testify, (4) why he did not pay the psychiatrist, and (5) why the Interdisciplinary Report was not presented to the jury.

11. Mr. Hammons explain his legal theory in the case and cite precedent and what evidence he presented.

12. Judge Godsey explain why he allowed a case to be fraudulently conducted in his court.

QUESTIONS PRESENTED

1. Can the Kentucky Supreme Court pass or enact laws while simply ignoring valid laws passed by the State Legislators? U. S. Const. Article 6.

2. Can the Chief Justice of the Kentucky Supreme Court designate his duty to Judges of inferior court or Administrative functionaries in lieu of his peers? Ky. Const. Sec. 110(5)(b), Sec 112(4), K.R.S. 27A.010, 27A.020, 27A.050.

3. Can the legislators delegate the Chief Justice the authority to delegate judicial functions of the Supreme Court to others than his peers (other Supreme Court Justices) in violation of U. S. Constitution, Article VI, K.R.S. 27A.010, 27A.020, 27A.050?

4. When Judges disqualify themselves pursuant to State Law (K.R.S. 26A.015), can they arbitrarily disregard valid laws of this state by refusing to certify reasons for the disqualifications?

5. Can a Circuit Judge elected in the 16th Judicial Circuit exercise jurisdiction over Judges elected in other Judicial circuits (Sixth Region, the equivalent of the Sixth District of the Court of Appeals which requires that Judges be elected in that district) in violation of the one man, one vote rule?

6. Can Administrative Officers of the court perform judicial function, enact legislation or make court rule contrary to valid State laws?

7. Do the duties of Chief Justice of Kentucky as outlined in K.R.S. 27A.010, 27A.020, 27A.050 and Ky. Constitution

Sec. 109 thru 124 meet criteria set out in U. S. Constitution Article III, Sec. 1 and 2 and Article VI?

MEMORANDUM

May it please the Court: The right of Petitioner to petition the government for redress of grievances herein mentioned are protected by the First Amendment to the U. S. Constitution and the ensuing Memorandum contains legal arguments therefor.

The jurisdiction to hear and determine any cause that has as its ultimate objective a Judgment declaring what the Supreme Court must do or not do is vested exclusively in the Supreme Court. *Ex parte Farley*, 570 SW 2d 617.

The equal protection clause of the Fourteenth Amendment reaches the exercise of State power, however, manifested, whether exerted directly or through political subdivisions. U. S. Const. 14th Amend. *Levy* v. *Parker*, 346 F Supp 897.

In determining constitutionality of proposed plan for legislative reapportionments, Federal court will not give credence to a plan predicated on at large scheme of representation. U. S. Const. 14th, 15th Amend. *Sims* v. *Amos*, 336 F Supp 924.

Some issues here are: (1) Whether an Order by the Chief Justice of the Kentucky Supreme Court, entered October 18, 1983, pursuant to Kentucky Constitution, Sec. 110(5)(b), 112(4) and K.R.S. 27A.010, 27A.020 is constitutional in so far as it purports to permit a duly elected circuit judge of the 16th Judicial Circuit to exercise jurisdiction over judges duly elected in other judicial circuits, (Sixth Region) the equivalence of the Sixth District of the Court of Appeals which requires that Judges be elected in their respective districts.

Said order is in violation of one man, one vote rule. "Apportionment by state statute (or otherwise) which denies the Rule of one man, one vote rule is violative of equal protection laws." *Baker* v. *Carr*, 369 US 186.

And (2) whether the Chief Justice of the Kentucky Supreme

Court can delegate functions of the Kentucky Supreme Court to inferior courts and other functionaries (anyone the Chief Justice in his sole discretion may choose).

In *Ex parte Farley*, 620 the Court refers us to the Kentucky Constitution, Sec. 110 (5)(b) . . . "Chief Justice shall be the Executive Head of the Court of Justice" . . . shall appoint such administrative assistants as he deems necessary. K.R.S. 27A.010, 27A.020, 27A.050 . . . . in his sole discretion . . .

Seriously, as not to lose sight of where we are, we need to look closer at the enabling clause of the Kentucky Constitution Sec. 109 thru 124 and the enabling statutes from which this source of power comes.

The Chief Justice says, "The Court of Justice and its officers and employees are the judicial department of the Commonwealth. Ky. Const. Sec. 27, 28, 109. The Court of Justice is a unified judicial system for operation and administration."

Article III, Sec. 1 of U.S. Constitution states, "The Judicial power . . . . shall be vested in one Supreme Court and in such inferior courts as . . . congress . . . shall from time to time ordain and establish . . . Article VI of U.S. Constitution makes this applicable to States.

Did the framers of the U.S. Constitution intend that inferior courts be Supreme courts? Conversely, did the framers of the U.S. Constitution intend that Supreme courts be inferior courts? — Hardly so.

Common sense would indicate if the courts were unified, the one court would either be Supreme or inferior. The maxims — "A whole is the sum of its parts" — "A chain is only as strong as its weakest link" — all hold true here. In reality, any court unified with an inferior court would be inferior.

We would not want to give a niggardly construction to the duties of a Chief Justice, but nowhere in the U.S. Constitution do the Founding Fathers envision powers conceived by the Kentucky Supreme Court Chief Justice.

K.R.S. 27A.020 — Delegation of Functions — The Chief Justice in his sole discretion may delegate the following functions to the Administrative Director of the Courts or to his Administrative Assistants: . . . .

Time will not permit us to take each function, but we will begin at No. (6), "Formulate and submit to the Supreme Recommendations of policies of improvement of the Court of Justice." How? Will these functionaries hired by the Chief Justice recommend policies for the Supreme Court? Is the Supreme Court obligated to accept these policies? Can we rely on these functionaries to suggest to the State Supreme Court that the Constitutional provisions and statutes the court is acting under may be in conflict with the Supremacy Clause of the U.S. Constitution, Article VI?

No. (8), "Report to the general assembly concerning the work of the Court of Justice and make such recommendation for the improvement of administration of justice as deemed necessary and proper."

Does this include making court rules that conflict with valid statutes passed by legislators, under the guise the court (functionaries) has inherent power by virtue of Constitutional provisions? Sec. 109 — 124 and K.R.S. 27A.010, 27A.020, 27A.030. Ludicrous.

Racial discrimination and judicial usurpation in the Kenton County District and Circuit Courts have deprived Petitioner of a fair trial and/or Appeal in 85-H-79 and 85 X 61, and other cases.

Ky. Constitution Sec. 116 . . . The Supreme Court shall by rule, govern admissions to the bar and the discipline of members of the bar.

I filed a Complaint against Mr. John Elfers, County Attorney, who allegedly perpetrated fraud upon the Court in 85-H-79, with the State Bar Association. The Bar Association refused to investigate. I informed the Chief Justice; He did nothing. Ex. 2. One could assume from this that it is alright to commit fraud upon the courts in Kenton County.

I informed the Chief Justice that all Judges of the 16th Judicial District, including Judge Lape, disqualified themselves in 85-H-79 pursuant to K.R.S. 26A.015, yet the Judges filed no certification of disqualification as required by law.

Mr. Elfers does not deny that he committed fraud upon the

Court in 85-H-79 or fixed the outcome of the trial. The Chief Justice turned these matters over to functionaries.

Not only do these functionaries not have any legal authority to carry out duties given them by the Chief Justice, these functionaries have promulgated rules contrary to existing valid laws of this State:

(1) These rules permit the District or Circuit Courts to refuse to accept for filing (from Petitioner) a case in which a jury trial is requested, unless the jury fee is prepaid, Kenton Circuit Court No. 86-CI-1266;

(2) The Kenton Circuit Court permits the District Court to illegally issue summons after the District Court loses jurisdiction over the case. (e.g. Appeals to Kenton Circuit Court from Kenton District Court — Appeal dismissed by Kenton Circuit Court, case not remanded back to Kenton District Court. Deputy Clerks issue criminal summons without any authority whatsoever — no judge's order or any other legal authority. On the bases of the illegally issued summons, the judges of the Kenton District Court illegally extract a fine or put you in jail.) This amounts to fraud upon a litigant and has happened a number of times to Petitioner.

In 1980 the Auditor of Public Accounts attempted to audit the Kentucky judicial system, but was rejected by the Kentucky Supreme Court. An audit would have revealed this judicial usurpation by court functionaries.

The then Chief Justice said, ". . . Legislation is not the real source of pressure anyway . . . The office of the auditor is essentially political in nature . . ." *Ex parte auditor of public accounts*, 609 SW 2d 682, 688. * * *

A constitutional democracy like ours is perhaps the most difficult of mans social arrangements to manage successfully. Our scheme of society is more dependent than any other form of government, on knowledge, and wisdom and self-discipline for the achievements of its aims. For our democracy implies the reign of reason on the most extensive scale. The founders of this nation were not imbued with the modern cynicism that the only thing that history teaches is that it teaches nothing. They acted on the confiction that the experience of

man sheds a good deal of light on his nature. It shed a good deal of light not merely on the need for effective power, if a society is to be at once cohesive and civilized, but also on the need for limitations on the power to governors over governed. To that end they rested the structure of our central government on the system of checks and balances. For them the doctrine of separation of powers was not merely theory; it was a felt necessity. Not so long ago it was fashionable to find our system of checks and balances obstructive to effective government. It was easy to ridicule that system as outmoded — to ease. The experience through which the world has passed in our own day has made vivid the realization that the framers of our Constitution were not inexperienced doctrinaires. The long-headed statesmen had no illusion that our people enjoyed biological or psychological or sociological immunities from the hazards of concentrated power. It is absurd to see a dictator as a representative product of the sturdy democratic traditions of the Mississippi Valley. The accretion of dangerous power does not come in a day. It does come, however slowly, from the generative force of unchecked disregard of restrictions that fence in even the most disinterested assertion of authority . . .

The framers, however, did not make the judiciary the overseer of our government. They were familiar with the rivisory functions entrusted to judges in a few of the states and refused to lodge such powers in the court. Judicial power can be exercised only as to matters that were traditional concern of the courts at Westminster and only if they arise in ways that to the expert feel of lawyers constitute "Cases" or "Controversies." . . . . The pole-star for constitutional adjudications is John Marshall's greatest judicial utterance that, "It is a Constitution we are expounding." (*McCullough* v. *Maryland*, 4 WHEAT 316, 407.) That requires both a spacious view in applying an instrument of government "made for an undefined and expanding future," *Hurtado* v. *California*, 110 US 516, 530, . . . Marshall's admonition that, "It is a Constitution we are expounding" is especially relevant when the court is required to give legal sanctions to

an underlying principle of the Constitution — that of separation of powers. "The great ordinance of the Constitution do not establish and divide fields of black and white." Holmes, J., dissenting in *Springer* v. *Philippine Islands*, 277 US 189, 209; *Youngstown*, *Supra*, 343 593 Thru 597.

But, basic to the constitutional structure established by the framers was their recognition that "The accumulation of all power, legislative, executive, and judiciary in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny. The federalist No. 47 P. 300 (H. Lodge ED. 1888) (J. Madison) To ensure against such tyranny the framers provided that the federal government would consist of three distinct branchs, each to exercise one of the governmental powers recognized by the framers as inherently distinct. "The framers regarded the check and balances that they built into the tripartite federal government as a self-executing safeguard against the encroachment of aggrandizement of one branch at the expense of the other." *Buckley* v. *Valeo*, 424 US 1, 122.

The federal judiciary was therefore designed by the framers to stand independent of the executive and legislature — to maintain the checks and balances of the constitutional structure, and also to guarantee that the process of adjudication itself remained impartial. *Northern Pipeline Co.* v. *Marathon Pipeline Co.*, 458 US 48, 49.

This decree is made applicable to the states by the Supremacy Clause — Article 6 of the United States Constitution.

"This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding." U.S. Const. Article VI.

It may be stated . . . As a general rule inherent in the American Constitutional system, that, unless otherwise ex-

pressly provided or incidental to powers conferred, the legislature cannot exercise executive or judicial power, the executive cannot exercise either legislative or judicial power, the judiciary cannot exercise either executive or legislative power. The existence in the various constitutions of occasional provisions expressly giving to one of the departments powers which by their nature otherwise would fall within the general scope of the authority of another department, emphasizes, rather than casts doubt upon, the generally inviolate of the general rule. *Springer* v. *Philippine Islands*, 277 US 189, 201, 201 (1928).

An order (adopting Regional Administration Program charter) executed pursuant to an act of the legislative and consistent with the Supremacy Clause of the U. S. Constitution, would be supported by the strongest of presumptions and the widest latitude of judicial interpretation . . . but in absence of legislative intent, it cannot.

Such power either has no beginning or it has no end. If it exists, it need submit to no legal restraint . . . .

Laws entail sanctions — penalties for their violation. One type of sanction is fine and imprisonment. Another is seizure of property . . . . A determination that sanction should be applied, that the hand of the law should be placed upon the parties, and that the force of the courts should be directed against them is an exercise of legislative power. We have chosen to place that power in legislators. U. S. Const. Article I Sec. 1. All legislative powers herein granted shall be vested in a congress . . . *Youngstown Co., Supra*, 343 US 593, 578.

Absence of the authority claimed by the Chief Justice to adopt a regional administration program charter or Judge Lape to act pursuant thereto does not imply want of power in the government. Conversely the fact that power exists in the government does not vest it in the Kentucky Supreme Court or its Chief Justice. The need for new legislation does not enact it, nor does it repeal or amend existing laws. To draw implied approval of inherent power from this history is to make something out of nothing.

"Checks and balances were established that this should be a

government of law and not of men." *Meyer, Supra*, 272 US 292.

"It is a canon of interpretation that real effect should be given to all words of the Constitution." *Myers, Supra*, 151.

"Guiding principle of statutory construction is to ascertain legislative intent." *Craig* v. *Finch*, 425 F2d 1005 (1970).

"The doctrine of separation of powers was adopted by the convention of 1787, not to promote efficiency, but to preclude the exercise of arbitrary power. The purpose was not to avoid friction, but by means of the inevitable friction incident to the distribution of government powers among three departments, to save the people from autocracy." *Myers, Supra*, 52, 240, 293.

"It is . . . essential to the successful working of this system (of separation of powers) that the persons interested with power in any one of these branches shall not be permitted to encroach upon the powers confided to others, but that each shall by the law of its creation be limited to the exercise of the powers appropriate to its own department and none other." *Kilbourn* v. *Thompson*, 103 US 168, 191 (1882).

As Chief Justice Marshall said in *Cohen* v. *Virginia*, 6 WHEAT 264, 404 (1821).

"Questions may occur which we would gladly avoid; but we cannot avoid them. All we can do is to exercise our best judgment and conscientiously to perform our duty."

Thus we turn to the question of whether the acts complained of herein violate structures of the U. S. Constitution. Of course, one begins with the presumption that the challenged State constitution and statutes are valid.

Its wisdom is not the concern of the courts; if a challenged action does not violate the federal constitution, it must be sustained.

"Once the meaning of an enactment is discerned and its constitutionality determined, the judicial process comes to an end. We do not (the Court) sit as a committee of review, nor are we vested with the power of veto." *TVA* v. *Hill*, 437 US 153 — 194-195.

By the same token, the fact that a given law or procedure is

efficient, convenient, and useful in facilitating functions of government standing alone, will not save it if it is contrary to the (federal) constitution. *INS* v. *Chadha*, 462 US 948, 949.

"Public bodies, like private persons, are occasionally under the dominion of strong passions and excitements; impatient, irritable, and impetuous . . . If (a court or judge) feels no check but its own will, it rarely has the firmness to insist upon holding a question long enough under its own view, to see and mark it in all its bearings and relations on society." *1 Story, Supra*, at 383, 384.

CONCLUSION

The Kentucky Supreme Court Justices are to be commended for their efforts to deal with a state constitution that appears to hinge on views of anarchy.

Of course, we think the Kentucky Supreme Court can declare these antiquated constitutional provisions unconstitutional (Kentucky Constitution Sec. 109 thru 124; K.R.S. 27A.010, 27A.020, 27A.050), and we think they will, unless they too have turned back the clock, yet advocating anarchy.

"The claim of inherent and unrestricted . . . . powers has long been a persuasive dialectical weapon in political controversy. While it is not surprising that counsel should grasp support from such unadjudicated claims of power, a judge cannot accept self-serving press statements of the attorney for one of the interested parties as authority in answering a constitutional question, even if the advocate was himself. But prudence should counsel that actual reliance on such nebulous claim stops short of provoking a judicial test." *Youngstown, Supra*, 343 US 647.

If not good law, there was worldly wisdom in the maxim attributed to Napolean that, "The tools belong to the man who can use them." We may say that power to legislate for emergencies belongs in the hands of the legislators, but only the legislature itself can prevent power from slipping through its fingers.

The essence of our free government is, "Leave to live by no man's leave, under the law" — to be governed by those impersonal forces which we call law. Our government . . . . is fashioned to fulfill this concept so far as humanly possible . . . . with all its defects, delays and inconveniences, men have discovered no technique, for long preserving free government except that . . . (those appointed) . . . be under the law, and that the law be made by parliamentary deliberations. Such institutions may be destined to pass away, but it is the duty of the court to be last, not first, to give them up. *Youngstown, Supra*, 343 US 654.

"Germany, after the first world war, framed the Weimar Constitution, designed to secure her liberties in the Western tradition. However, the president of the Republic, without concurrence of the Reichstag, was empowered temporarily to suspend any or all individual rights if public safety and order were seriously disturbed or endangered. This proved a temptation to every government, whatever its shade of opinion, and in 13 years suspension of rights were invoked on more than 250 occasions. Finally, Hitler persuaded President Von Hindenberg to suspend all such rights, and they were never restored." *Youngstown, Supra*, 343 US 651.

Petitioner encourages and/or invites any interested party whose views are in accordance with the intent and/or spirit of this Petition to file a brief Amicus Curiae.

/s/ EDDIE THOMPSON, JR., Pro Se

[INDEX TO APPENDIX OMITTED IN PRINTING]

EXHIBIT 1

February 4, 1986

Chief Justice Stephens
Kentucky Supreme Court

RE: Complaint filed with Kentucky Bar Association Against Mr. John Elfers

On November 12, 1985, I attempted to file a complaint against Mr. John Elfers with the Kentucky Bar Association. On November 19, 1985, I was informed that the Bar would treat this matter in accordance with the Rules of the Supreme Court of Kentucky.

On January 24, 1986, I was informed that my complaint was dismissed. Ky. S CR 3.160(3) provides — "Notwithstanding the provisions of paragraph (1), if the director deems any written complaint against a member frivolous on its face, he may submit it to the chairmen of the inquiry tribunal who may decline, without investigation, to entertain it and may authorize the director to return the complaint to the complaining party with a letter of explanation."

The complaint was not returned to me, nor did I receive any explanation. Because I believe the charges are serious and that Mr. Davis erred in his assessment of the facts, I am enclosing the a copy of the letter and exhibits I sent to Mr. Davis. Also, I am annexing an Affidavit of facts in this matter to this letter.

I trust you will cause an inquiry into this matter. I look forward to your response at your earliest convenience. Thank you.

Sincerely yours,

/s/ EDDIE THOMPSON, JR.
P.O. Box 1221
(309 Pleasant Street)
Covington, Kentucky 41012
606/491-6278

Enclosures

EXHIBIT 2

[LETTERHEAD OF SUPREME COURT OF KENTUCKY]

February 13, 1986

Mr. Eddie Thompson, Jr.
P. O. Box 1221
309 Pleasant Street
Covington, Kentucky 41012

Dear Mr. Thompson:

I am in receipt of your letter of February 4, 1986, regarding your complaint filed with the Kentucky Bar Association against Mr. John Elfers.

It is solely within the jurisdiction of the Kentucky Bar Association to investigate complaints lodged against attorneys and to determine whether there is sufficient evidence to conclude that the attorney engaged in unethical conduct. A review of the materials appended to your letter shows that Hon. Bruce K. Davis, Director of the Kentucky Bar Association, informed you by letter dated January 24, 1986, that your complaint had been dismissed by the Inquiry Tribunal. After investigation the Bar Association determined that there was insufficient evidence to conclude that the attorney engaged in unethical conduct.

As the Supreme Court is not empowered to investigate complaints lodged against attorneys, I am returning your correspondence and attachments. I regret that I can not be of further assistance to you in this matter, but I can only refer your inquiry to the Kentucky Bar Association.

Very truly yours,

/s/ ROBERT F. STEPHENS
Chief Justice

RFS:gg
enclosures

EXHIBIT 3

COMMONWEALTH OF KENTUCKY
SIXTH REGION OF JUDICIAL CIRCUITS
KENTON CIRCUIT

Case No. 85-CI-1115

COORDINATION COMMUNICATION
RESEARCH MANAGEMENT, INC.,
Plaintiff(s)

vs.

ALL NATIONS TEMPLE CHURCH OF GOD IN
CHRIST, INC., and E. J. THOMPSON
Defendant(s)

ASSIGNMENT OF SPECIAL JUDGE
(Entered March 3, 1986)

It having been properly certified under KRS 26A.015 that the Honorable DANIEL J. GOODENOUGH (All Judges), regular judge of the 16th Judicial Circuit, is disqualified in the above-styled cause, the Honorable SAMUEL NEACE, regular judge of the 54th Judicial Circuit, is designated by the undersigned, pursuant to the authority of the Order of the Supreme Court of Kentucky, effective December 1, 1983, to preside in this matter in the KENTON Circuit Court until final determination.

Dated: February 28, 1986.

/s/ RAYMOND E. LAPE, JR.
Chief Regional Judge
Sixth Region
Of Judicial Circuits

EXHIBIT 4

COMMONWEALTH OF KENTUCKY
SIXTH REGION OF JUDICIAL CIRCUITS
KENTON CIRCUIT

Case No. 85-X-061

EDDIE THOMPSON, JR., AND
COMMONWEALTH OF KENTUCKY
Plaintiff(s)

vs.

E. J. THOMPSON, SR.,
Defendant(s)

ASSIGNMENT OF SPECIAL JUDGE
(Entered March 3, 1986)

It having been properly certified under KRS 26A.015 that the Honorable DANIEL J. GOODENOUGH (All Judges), regular judge of the 16th Judicial Circuit, is disqualified in the above-styled cause, the Honorable SAMUEL NEACE, regular judge of the 54th Judicial Circuit, is designated by the undersigned, pursuant to the authority of the Order of the Supreme Court of Kentucky, effective December 1, 1983, to preside in this matter in the KENTON Circuit Court until final determination.

Dated: February 28, 1986.

/s/ RAYMOND E. LAPE, JR.
Chief Regional Judge
Sixth Region
Of Judicial Circuits

EXHIBIT 5

April 30, 1986

Honorable Robert F. Stephens
Chief Justice
Kentucky Supreme Court
Capitol Building
Frankfort, Kentucky 40601

Dear Sir:

On March 3, 1986, Honorable Judge Raymond E. Lape, Jr., Chief Regional Judge Sixth Region of Judicial Circuits, assigned the Honorable Judge Samuel Neace, regular Judge of the 54th Judicial Circuit to preside in two Kenton County Circuit Court cases until final determination. (Exhibits 1 and 2)

Presumably, Judge Lape disqualified himself, as a regular Judge of the 16th Judicial Circuit, as a matter of principle.

SCR 1.040(4)(c) provides: In the absence of good cause to the contrary, all matters connected with a pending or supplemental preceeding shall be heard by the Judge to whom the proceeding was originally assigned.

Undoubtedly, Judge Lape has all 4 certifications under K.R.S. 26A.015. Nevertheless, K.R.S. 26A.015(3)(A) provides: Any Justice or Judge of the Court of Justice disqualified under the provisions of this section shall be replaced by the Chief Justice.

Both of these cases involve my Father, who has been diagnosed by a psychiatrist, a psychologist, and a social worker as needing a conservator and/or a guardian. (Exhibits 3, 4, 5, and 6)

Case No. 1 — Coordination Communication Research Management, Inc. v. All Nations Temple Church of God in Christ, Inc. and E. J. Thompson — 85-CI-1115. This suit was brought by Mr. Ralph Barnett, who allegedly has already defrauded my Father, E. J. Thompson of over $4,375.00.

Case No. 2 — Commonwealth of Kentucky and Eddie Thompson, Jr. v. E. J. Thompson — 85 X 61. The petition

originated in the Kenton District Court as 85-H-079. Mr. John Elfers allegedly caused fraud to be practiced by forcing Mr. Hammons in the case as my Father's attorney. When confronted, Judge Godsey refused to recluse himself. Judge Godsey permitted Mr. Hammons to improperly question petitioner and petitioner's witness.

Judge Godsey ignored the fact that the Interdisciplinary Reports were not given to the jury. Judge Godsey allowed the jury to speculate on Mr. Hammons argument; even though, Mr. Hammons presented not one witness or other evidence.

The tapes of the proceeding have been tampered with. A blind man could handle these uncontested facts.

In 85-CI-1115, Mr. Ruberg requested a hearing for April 22, 1986. Mr. Ruberg did not make an argument at the hearing. Another attorney who was unfamiliar with the case asked the court to dismiss the case with prejudice.

As indicated by Exhibit 7, there was a hearing in Judge Goodenough's court on February 17, 1986. E. J. Thompson was not present at that hearing, and as far as I know, E. J. Thompson knew nothing of a hearing on that date. After my letter (Exhibit 9), Mr. Ruberg filed a second motion. (Exhibit 10) Mr. Ruberg then must have realized he had no business in Boone Circuit Court in this case, so he then asked for dismissal without prejudice (Exhibit 11). When E. J. Thompson and I showed up, Mr. Ruberg had someone else to ask the Judge for dismissal with prejudice. In the absence of the record, the Honorable Judge could make no decision.

It is respectfully requested that you appoint a special Judge to determine the appeal in 85 X 61. It is further requested that the special Judge hold a hearing with all interested parties present.

It is necessary for a hearing because of record tampering in the Kenton County courts.

Sincerely,

/s/ EDDIE THOMPSON, JR.
P.O. Box 1221
Covington, Kentucky 41012

EXHIBIT 6

[LETTERHEAD OF SUPREME COURT OF KENTUCKY]

May 6, 1986

Mr. Eddie Thompson, Jr.
P. O. Box 1221
Covington, Kentucky 41012

Dear Mr. Thompson:

Your letter of April 30, 1986 to Chief Justice Stephens concerning pending lawsuits in Kenton Circuit Court has been referred to this office. The Canons of Judicial Ethics prohibit the Chief Justice from communicating directly with potential litigants in the Supreme Court.

Chief Regional Judge Lape has been delegated the authority to appoint special judges by the Chief Justice pursuant to an order of the Supreme Court. Judge Lape has wide discretion in the exercise of such authority, which extends to appointments made pursuant to KRS 26A.015. The Chief Justice no longer appoints special judges pursuant to KRS 26A.015 unless referred to him by a Chief Regional Judge.

Sincerely,

/s/ ROBERT E. McBEATH
Court Administrator

REM:ll

EXHIBIT 7

May 12, 1986

Mr. Robert E. McBeath
Court Administrator
Supreme Court of Kentucky
Frankfort, Kentucky 40601

Dear Sir:

Thank you for your prompt reply to my letter of April 30, 1986. My letter raises some serious questions concerning authority allegedly delegated to the Honorable Judge Raymond Lape, a Regular Judge of the 16th Judicial Circuit, doubling as Chief Regional Judge of the Sixth Region of Judicial Circuits.

I am well acquainted with the Honorable Judge Lape and believe him to be a man of high morals and integrity. But that is not the issue here.

Presumably, all four Regular Judges of the 16th Judicial Circuit have certified to the Kentucky Supreme Court good cause for disqualifying themselves. (K.R.S. 26A.015 and SCR 1.040(4)(c))

The question then is: Can a Judge disqualify himself at one stage of a proceeding, then take some other action in the same cause?

The Court touched on a similar issue in *Wedding* v. *Lair*, 404 S.W. 2d 451, Ky. Court of App. 1966, when it said: "After the regular Judge has disqualified himself and vacated the bench, he has no power thereafter in that particular case to appoint an attorney to defend the accused."

That Court also held that: The power of the legislature to provide for the manner of selecting special judges cannot be questioned. *Philpot* v. *Commonwealth*, 240 Ky 289, 42 S.W. 2d 317 (1931).

Justice delayed is justice denied. My Father needs help. My Father is unable to manage his business and personal affairs. This is no secret in Northern Kentucky. I filed a petition to

have my Dad declared disabled to protect him and the family's estate.

The County Attorney, Mr. John Elfers, had his office disqualify itself. Yet, Mr. Elfers, who already had my Dad set up in a swindle, caused the proceedings to be fraudulently conducted.

No one can deny that, (1) My Dad is unable to manage his affairs, (2) Mr. Elfers caused the case to be fraudulently conducted, (3) The case was fraudulently conducted, or (4) that the tapes of the proceeding have been tampered with.

I would like a copy of the Supreme Court order authorizing Judge Lape to appoint a Special Judge pursuant to K.R.S. 26A.015. The order appears to conflict with K.R.S. 26A.015(3)(a).

I also think I should be entitled to a copy of the certifications of disqualification of these judges.

This is obviously a unique situation. A trial is alleged to have been fraudulently conducted in a District Court of a Judicial Circuit, and none of the four Circuit Judges feels he can make a fair and impartial ruling on the appeal. Maybe on occasions an unfair trial is routine for certain people in Kenton County.

As a Kentuckian, I think we deserve better than this.

Sincerely,

/s/ EDDIE THOMPSON, JR.
P.O. Box 1221
Covington, Kentucky 41012

EXHIBIT 8

SUPREME COURT OF KENTUCKY

ORDER ADOPTING
REGIONAL ADMINISTRATION PROGRAM CHARTER

Effective December 1, 1983, Regional Administration of the Circuit and District Courts shall be governed by the provisions of the Regional Administration Program Charter, attached as the appendix to this order.

This Charter supersedes (1) the Regional Administration Pilot Program Charter, as amended and promulgated under order of this Court dated December 5, 1977, (2) the order of the Chief Justice establishing Transitional Provisions dated November 23, 1977, (3) the Regional Administration Program Charter as revised and promulgated under order of this Court dated October 8, 1980, (4) the order of this Court relating to the judicial assignment authority of Chief Regional District Judges entered February 25, 1982, and (5) the Regional Administration Program Charter as revised and promulgated under order of this Court dated February 3, 1983.

Entered October 18, 1983.

/s/ ROBERT F. STEPHENS
Chief Justice

EXHIBIT 9

REGIONAL ADMINISTRATION PROGRAM CHARTER

Pursuant to Sections 110(5)(b) and 112(4) of the Kentucky Constitution, the following Charter is established to effect regional administration of the circuit and district courts.

SECTION I. NAME OF THE PROGRAM

This program shall be known as the Regional Administration Program and shall continue from the date of the entry of this order until further order of this Court.

SECTION II. ADMINISTRATIVE REGIONS

Eight administrative regions are created and designated as follows:

1. The first region, the Purchase Region, shall consist of the 1st, 2nd, 3rd, 4th, 5th, 7th, 42nd, 45th, 51st, 52nd and 56th Judicial Circuits and Judicial Districts.

2. The second region, the Pennyrile Region, shall consist of the 6th, 8th, 9th, 10th, 38th, 43rd, 46th and 49th Judicial Circuits and Judicial Districts.

3. The third region, the Cumberland Region, shall consist of the 11th, 26th, 27th, 28th, 29th, 34th, 40th, 41st and 44th Judicial Circuits and Judicial Districts.

4. The fourth region, the Metro Region, shall consist of the 30th and 55th Judicial Circuits and Judicial Districts.

5. The fifth region, the Bluegrass Region, shall consist of the 13th, 14th, 23rd, 35th, 48th and 50th Judicial Circuits and Judicial Districts.

6. The sixth region, the Northern Region, shall consist of the 12th, 15th, 16th, 17th, 19th, 53rd and 54th Judicial Circuits and Judicial Districts.

7. The seventh region, the Mountain Region, shall consist of the 20th, 21st, 24th, 31st, 32nd, 33rd, 35th, 36th, 37th, 39th, and 47th Judicial Circuits and Judicial Districts.

8. The eighth region, the Fayette Region, shall consist of the 22nd Judicial Circuit and Judicial District.

SECTION III. PURPOSE OF THE PROGRAM

The Regional Administration Program has three goals:

1. to expedite disposition of litigation in the regions through equalization of work among the judges;

2. to promote uniform procedures and practices within regions and throughout the state;

3. to provide for prompt substitution where a judge is disqualified or where there is temporary vacancy.

SECTION IV. CHIEF REGIONAL JUDGES

1. A chief regional circuit judge shall be appointed or reappointed by the Chief Justice every two years beginning December 1, 1983. His duties, relating to the circuit courts of the region, shall be as follows:

a. to plan, coordinate and supervise the activities of the regional administration program, together with the chief regional district judge, within the region;

b. to exercise within the region the judicial assignment authority (Kentucky Constitution Section 110(5)(b)) which is hereby delegated to him by the Chief Justice;

c. to exercise within the region the judicial assignment authority for appointment of retired judges who consent to appointment which is hereby delegated to him by the Chief Justice;

d. to exercise, in coordination with other chief regional circuit and district judges, authority for assignment of judges from one region to another with the consent of the appropriate chief regional circuit or district judge;

e. to require each judge to reserve periods of time of such length and frequencies as the chief regional judge deems appropriate interspersed throughout each calendar year to be available for assignment in other circuits; and

f. to call or cause to be called the docket of any circuit for the purpose of dismissing pending actions for failure to prosecute or reduce delay.

2. Notwithstanding the provisions of SCR 1.040(2) the chief regional judge appointed by the Chief Justice for the eighth region consisting of the 22nd Judicial Circuit shall also serve as chief judge of that court and if the chief regional judge appointed by the Chief Justice for the fourth region consisting of the 30th and 55th Judicial Circuits is a judge of the circuit court for the 30th circuit, the chief regional judge shall also act as chief judge of that court.

3. Selection and duties of chief regional district judges.

A chief regional district judge shall be appointed or reappointed by the Chief Justice every two years beginning December 1, 1983. His duties relating to the district courts of the region, shall be as follows:

a. to plan, coordinate and supervise the activities of the regional administration program, together with the chief regional circuit judge, within the region;

b. to exercise within the region the judicial assignment authority (Kentucky Constitution Section 110(5)(b) which is hereby delegated to him by the Chief Justice;

c. to exercise within the region the judicial assignment authority for appointment of retired judges who consent to appointment, which is hereby delegated to him by the Chief Justice;

d. to exercise, in coordination with other chief regional district and circuit judges, authority for assignment of judges from one region to another with the consent of the appropriate chief regional district or circuit judge;

e. to require each judge to reserve periods of time of such length and frequencies as the chief regional judge deems appropriate interspersed throughout each calendar year to be available for assignment in other circuits; and

f. to call or cause to be called the docket of any circuit for the purpose of dismissing pending actions for failure to prosecute or reduce delay.

4. Notwithstanding the provisions of SCR 1.040(2) the chief regional judge appointed by the Chief Justice for the eighth region consisting of the 22nd Judicial District shall also serve as chief judge of that court and if the chief regional

judge appointed by the Chief Justice for the fourth region consisting of the 30th and 55th Judicial Districts is a judge of the district court for the 30th district, the chief regional judge shall also act as chief judge of that court.

5. Selection and duties of Vice-Chief Regional Circuit Judges.

A vice-chief regional circuit judge shall be appointed or reappointed by the Chief Justice every two years beginning with December 1, 1983. It shall be the duty of the vice-chief regional circuit judge to exercise the judicial assignment authority of the chief regional circuit judge whenever the chief regional circuit judge disqualifies himself from a case, is otherwise unavailable, or the office of the chief regional circuit judge is vacant, and the assignment of a special judge is required.

6. Selection and duties of Vice-Chief Regional District Judges.

A vice-chief regional district judge shall be appointed or reappointed by the Chief Justice every two years beginning with December 1, 1983. It shall be the duty of the vice-chief regional district judge to exercise the judicial assignment authority of the chief regional district judge whenever the chief regiional district judge disqualifies himself from a case, is otherwise unavailable, or the office of chief regional district judge is vacant, and the assignment of a special judge is required.

SECTION V. JUDICIAL ASSIGNMENT AUTHORITY OF CHIEF REGIONAL JUDGES

1. The following procedures are established to implement the judicial assignment authority, delegated herein, of the chief regional circuit judges:

a. If a special judge assignment is necessary the judge requiring the appointment of a special judge shall notify the chief regional circuit judge in his region as soon as possible. If the need is occasioned by disqualification, the grounds of the disqualification shall be certified to the chief regional circuit

judge. The judge requesting shall also notify the circuit clerk(s) in the affected county or counties.

Upon notification of the need for a special judge, the chief regional circuit judge, will by written order, appoint a circuit judge within the region or, if none is available, request the chief regional district judge of the region to designate a qualifed district judge within the region who consents to the appointment, to serve as special judge for a designated time period. The chief regional circuit judge shall make the appointment and mail the disignation order to the appropriate circuit clerk. A copy of the designation order shall be retained by the chief regional circuit judge and a copy shall be sent to the special judge, to the requesting judge, and to the AOC.

b. If no circuit judge or consenting district judge or consenting retired judge is available within the region to hear the matter requiring a special judge, the chief regional circuit judge may request a chief regional circuit or district judge of another region to designate a special judge who consents to the appointment to hear the matter. The requesting chief regional circuit judge shall make the appointment.

c. If affidavits alleging non-impartiality are filed by a party, the facts shall be certified to the Chief Justice by the circuit clerk pursuant to KRS 26A.020.

2. The following procedures are established to implement the judicial assignment authority, delegated herein, of the chief regional district judges:

a. If a special judge assignment is necessary the district judge requiring the appointment of a special judge shall notify the chief regional district judge in his region as soon as possible. If the need is occasioned by disqualification, the grounds of the disqualification shall be certified to the chief regional district judge. The judge requesting shall also notify the circuit clerk(s) in the affected county or counties.

Upon notification of the need for a special judge, the chief regional district judge will, by written order, appoint a district judge within the region, or if none is available, request the chief regional circuit judge of the region to

designate a circuit judge within the region who consents to the appointment, to serve as special judge for a designated time period. The chief regional district judge shall make the appointment and mail the designation order to the apporipriate circuit clerk. A copy of the designation order shall be retained by the chief regional district judge and a copy shall be sent to the special judge, to the requesting judge, and to the AOC.

b. If no district judge or consenting circuit judge or consenting retired judge is available within the region to hear the matter requiring a special judge, the chief regional district judge may request a chief regional district or circuit judge of another region to designate a special judge who consents to the appointment to hear the matter. The requesting chief regional district judge shall make the appointment.

c. If affidavits alleging non-impartiality are filed by a party, the facts shall be certified to the Chief Justice by the circuit clerk pursuant to KRS 26A.020.

3. Where, under this Charter, a conflict arises that cannot be resolved by the exercise of the judicial assignment authority of a chief regional judge, delegated herein, the matter shall be referred to the Chief Justice for resolution.

4. It shall be the duty of the Director of the AOC or his designee to maintain records on the numbers and kinds of cases assigned by the chief regional judges within and among the regions, and to provide to the chief regional judges such information as may be required to make decisions concerning judicial assignments.

SUPREME COURT OF KENTUCKY

File No. 86-SC-750-OA

EDDIE THOMPSON, JR.,

Petitioner,

v.

HON. ROBERT F. STEPHENS, et al.,

Respondents.

RESPONSE TO PETITION FOR WRIT

Come the Respondents, the Hon. James Gilliece, the Hon. Douglas Stephens, and the Hon. James Godsey by counsel, and respond to the petition for a writ of mandamus and/or prohibition.

Petitioner's lengthy pleading is difficult to comprehend. Apparently, petitioner is complaining (1) that the circuit judges from Kenton Circuit Court all recused themselves from a case he was involved in and a special judge was appointed by the chief regional judge, and (2) that the chief justice of the Supreme Court did not himself appoint a special judge. He also discusses various other irrelevant points dealing with various district court cases he has been involved with in the past. However, he never gives any details nor shows why a writ is necessary for those situations.

In response to the merits of the petition, the Regional Administration Program adopted by this Court allows the chief regional judge to appoint a special judge when needed. In petitioner's case at the Kenton Circuit Court, all four circuit judges recused themselves. Thereafter, the chief regional judge, the Hon. Raymond Lape, Jr., designated the Hon. Samuel Neace, Boone Circuit Judge (54th Judicial Circuit) as special judge. Kenton Circuit (16th Judicial Circuit) and Boone Circuit (54th Judicial Circuit) are both in the Sixth

Region. Judge Lape's appointment of Judge Neace was entirely consistent with Section V of the Regional Administration Program Charter. On October 18, 1983, the chief justice of this Court entered an order adopting the Regional Administration Program Charter. Section 110 of the Kentucky Constitution designates the chief justice as the executive head of the Court of Justice and requires him to perform all necessary administrative functions relating to the court. Adoption of the Regional Administration Program Charter was within the constitutional authority of the chief justice. Consequently the petition fails on the merits.

Furthermore, the petition must fail for several other reasons. Petitioner has made no showing why the petition may be filed at the Supreme Court rather than the Court of Appeals as contemplated by CR 76.36. Petitioner has not shown that his situation is "so exceptional that no other remedy is adequate to prevent a miscarriage of justice." *Warrecke* v. *Richardson*, Ky., 468 S.W.2d 795, 796 (1971). Nor has he shown that he does not have an adequate remedy by appeal. *Burchell* v. *Cope*, Ky., 298 S.W.2d 693 (1957).

For all the above reasons, the petition should be denied.

Respectfully submitted,

DAVID L. ARMSTRONG,
Attorney General

/s/ NATHAN GOLDMAN,
Assistant Attorney General,
120 State Capitol,
Frankfort, Kentucky 40601-3494
502/564-7600

Attorney for GILLIECE, STEPHENS and GODSEY

[CERTIFICATE OF SERVICE OMITTED IN PRINTING]

COMMONWEALTH OF KENTUCKY
KENTUCKY SUPREME COURT

No. 86-SC-750-OA

EDDIE THOMPSON, JR.,

Petitioner,

vs.

CHIEF JUSTICE ROBERT F. STEPHENS,
HON. RAYMOND LAPE, JR.,
HON. JAMES GILLIECE,
HON. DANIEL GOODENOUGH,
HON. DOUGLAS STEPHENS,
HON. JAMES GODSEY,
HON. JOHN ELFERS,
HON. MICHAEL HAMMONS,

Respondents.

RESPONSE

Comes now the Respondent, Raymond Lape, Jr., and for his Response to the Petition for a Writ of Mandamus and/or Prohibition filed herein September 9, 1986, and received September 12, 1986, and states as follows:

I. He admits the allegations of Paragraphs 8, 12, 13, 15, 16, 17, 18, 19 and 20 of the Petition.

II. He denies the allegations of Paragraphs 21 and 23 of the Petition.

III. He is without knowledge or information sufficient to form a belief as to the allegations of Paragraphs 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 22, 24, 25, 26 and 27 of the Petition, so, therefore, he denies same.

IV. That the Court strike the pleadings of the Petitioner as being a sham, redundant, immaterial, impertinent and as being scandalous as permited by K.R.C.P., CR 12.06.

V. That the Petition filed herein is in violation of K.R.C.P., CR 11, in that it is not well grounded in fact and not warranted by existing law nor is it a good faith argument for the modification or reversal of existing law, and that it was interposed for the improper purpose of harassing the Court of Justice and the Respondent, Raymond Lape, Jr., as a party.

WHEREFORE, the Resondent, Raymond Lape, Jr., prays that he be dismissed from this action and that any costs herein be assessed against the Petitioner; further that the Petitioner be denied the privilege of filing any further lawsuits without being represented by a Kentucky licensed attorney at law since he abuses the judicial process, and for all other proper relief to which the Respondent, Raymond Lape, Jr., may be entitled.

Dated this 19th day of September, 1986.

/s/ RAYMOND LAPE, JR.,
Judge, Kenton Circuit Court,
First Division,
County Building,
3rd and Court Streets,
Covington, Kentucky 41011

[CERTIFICATE OF SERVICE OMITTED IN PRINTING]

SUPREME COURT OF KENTUCKY

File No. 86-SC-750-OA

EDDIE THOMPSON, JR.,

Petitioner,

v.

HON. ROBERT F. STEPHENS, et al.,

Respondents.

NOTICE OF REPRESENTATION OF COUNSEL

Comes the Respondent, Honorable Robert E. Stephens, and notified the Court that he will be represented in this matter by the undersigned attorney. Judge Stephens joins in the response to the petition for writ previously filed by the undersigned attorney on behalf of Respondents Judges James Gilliece, Douglas Stephens and James Godsey.

As further grounds all these Respondents state that this Court does not have jurisdiction over them since none of them was personally served as required by CR 4.04.

Respectfully submitted,

DAVID L. ARMSTRONG,
Attorney General

/s/ NATHAN GOLDMAN,
Assistant Attorney General,
120 State Capitol,
Frankfort, Kentucky 40601-3494
502/564-7600

Counsel For Respondents

[CERTIFICATE OF SERVICE OMITTED IN PRINTING]

KENTUCKY SUPREME COURT
FRANKFORT

No. 86-SC-750-OA

EDDIE THOMPSON, JR.,
Petitioner,

vs.

HON. ROBERT F. STEPHENS,
HON. RAYMOND LAPE, JR.,
HON. JAMES GILLIECE,
HON. DANIEL GOODENOUGH,
HON. RAYMOND LAPE, JR.,
HON. DOUGLAS STEPHENS,
HON. JAMES GODSEY,
HON. DOUGLAS STEPHENS,
HON. JOHN ELFERS,
HON. MICHAEL HAMMONS,
Respondents.

RESPONSE TO PETITION FOR WRIT OF MANDAMUS AND/OR PROHIBITION

Comes now, JOHN ELFERS, by and through counsel, and files his Response to Writ of Mandamus and/or Prohibition as follows:

1. The Respondent JOHN R. ELFERS specifically relies upon K.R.C.P. 12.02(e) insufficiency of service of process and wishes this Court to dismiss this claim as to JOHN ELFERS, since he was not personally served a copy of the Complaint pursuant to K.R.C.P. 4.04. The record should reflect that there was absolutely no service upon JOHN ELFERS.

2. It is well known that a Writ of Prohibition, which is authorized by Ky. Const. Sec. 110 & Sec. 111, is a discretionary action which is to be used in extraordinary circumstances. *Ohio River Contract Co.* v. *Gordon*, (1916) 170

Ky. 412, 186 S.W. 178, affd. 244 U.S. 68, 61 L.Ed. 997, 37 Sup. Ct. 599. Likewise the Court should be slow to use the supervisory power where there is a right to appeal. In the present case it appears that the Petitioner, EDDIE THOMPSON, JR., has a right to appeal case 85-X-61 through the normal appellate process, i.e. (Kentucky Court of Appeals).

In addition, it should be noted that the Petitioner filed a Complaint to determine if his father Eddie Thompson, Sr., was disabled. A jury found that his father was not disabled. The case then was taken to the Circuit Court on appeal and presumably affirmed and the Petitioner now seeks redress in this Court which is clearly improper.

A Writ of Prohibition or a Writ of Mandamus are discretionary and relief will not normally be granted expect where the exigencies are so exceptional that no other remedy is available to prevent miscarriage of justice. *Glasson* v. *Tucker*, Ky. 477 S.W. 2d 168 (1972).

3. In reviewing K.R.C.P. 76.36 it appears that the Petition for Writ of Mandamus and/or Prohibition is incorrect and cannot be brought in this Supreme Court.

It appears that case law in Kentucky is that an original proceeding of this type may only be filed in the Court of Appeals where there the delay associated with an appeal will cause a great injustice or great or irreparable harm, *Shumaker* v. *Paxton*, Ky. 613 S.W. 2d 130 (1981).

4. The Respondent wishes to set forth the excellent decision in *Ex Parte Farley*, Ky. 570 S.W. 2d 617 (1978) for a discussion of the powers of the Supreme Court in like cases.

5. With specific respects to the Petitioner's statement JOHN ELFERS denies emphatically Item 5 on page 2, Item 10 on page 3, Item 10 on page 5.

It should be noted that JOHN ELFERS, the Kenton County Attorney, disqualified his whole staff in case # 85-H-079. The Attorney General's office handled the Jury Trial on October 28, 1985. Assistant Attorney General David M. Lewis represented the interest of the Commonwealth of Kentucky in this Jury Trial and not JOHN ELFERS or any member of the Kenton County Attorney's office.

6. In addition, it is respectfully submitted that the "Petition for Writ of Mandamus and/or Prohibition" is in absolute violation of K.R.C.P. 11 and possibly K.R.C.P. 73.02(2) and (4) and JOHN ELFERS demands this Court assets attorney fees against the Petitioner for filing this frivolous action.

7. Further, this case should be dismissed as to JOHN ELFERS since it seeks no relief against him.

CONCLUSION

It is respectfully submitted that there are no facts to support a Writ of Mandamus and/or Prohibition as to JOHN ELFERS and the Petition should be dismissed.

If this Court desires counsel for JOHN ELFERS to Brief other issues and/or appear for Oral Argument, counsel would be happy to do so.

Respectfully Submitted:

/s/ MARTIN J. HUELSMANN,
Attorney for Respondent
JOHN R. ELFERS,
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[CERTIFICATE OF SERVICE OMITTED IN PRINTING]

KENTUCKY SUPREME COURT
COMMONWEALTH OF KENTUCKY

No. 86-SC-750-OA

EDDIE THOMPSON, JR.,
Petitioner,

vs.

HON. ROBERT F. STEPHENS, etc., et al.,
Respondents.

RESPONSE

Comes now the Respondent, Daniel J. Goodenough, and for his Response to the Petition for Writ of Mandamus and/or Prohibition filed herein, states:

1. That he admits Paragraphs 8, 12, 13, 14, 15, 16, 17, 18, and 19 of the Petition.

2. That he denies Paragraph 21 of the Petition.

3. That he does not have sufficient information or knowledge with which to admit or deny paragraphs 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 20, 22, 23, 24, 25, 26, and 27 of the Petition, so he therefore denies them.

4. That he did certify to the Chief Regional Judge his disqualification and the reason therefor in Case No. 85-X-61, Kenton Circuit Court.

5. That the Petition filed herein is in violation of CR 11, in that it is not well grounded in fact and not warranted by existing law or a good faith argument for the modification or reversal of existing Law, and that it was filed, and the Respondent named as a party, to harass the Respondent.

WHEREFORE, Respondent prays that he be dismissed from this action, and that his reasonable costs and attorney fees be assessed against the Petitioner.

September 18, 1986.

/s/ DANIEL J. GOODENOUGH

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Supreme Court, U.S.
FILED
FEB 5 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-1175

SUPREME COURT OF THE UNITED STATES

October Term, 1986

EDDIE THOMPSON, JR. - - - - Appellant

versus

ROBERT F. STEPHENS, Et Al. - - Appellees

On Appeal From the Kentucky Supreme Court

MOTION OF APPELLEES TO DISMISS

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INTRODUCTION

The purpose of this motion is to oppose Appellant's appeal since jurisdiction is lacking and no substantial question is presented.

No. 86-1175

SUPREME COURT OF THE UNITED STATES

October Term, 1986

EDDIE THOMPSON, JR. - - - - *Appellant*

v.

ROBERT F. STEPHENS, Et Al. - - *Appellees*

On Appeal From the Kentucky Supreme Court

MOTION OF APPELLEES TO DISMISS

STATEMENT OF FACTS

On September 9, 1986, the Appellant filed a "Petition for Writ of Mandamus And/Or Prohibition" at the Kentucky Supreme Court against the chief justice of that court, all the Kenton County, Kentucky circuit judges, a Kenton County district judge, the Kenton County attorney and an attorney from Covington, Kentucky. In his petition, which is very difficult to comprehend, Appellant appeared to be complaining that all of the circuit judges from Kenton County recused themselves from his father's guardianship case, and a special judge was appointed by the chief regional judge, rather than the chief justice of the Kentucky Supreme Court. Appellant also discussed the case from which the judges recused themselves. Appellee Godsey, the district judge, was the trial judge. Appellees Elfers and Hammons were attorneys in the case, although neither apparently represented Appellant.

The case apparently involved the appointment of a guardian for Appellant's father. Appellant appealed the decision of the trial court to the circuit court whereupon all the circuit judges recused themselves. Pursuant to Section V of the Regional Administration Program Charter adopted by the Kentucky Supreme Court on October 18, 1983, the chief regional judge (Appellee Lape) of the Sixth Region, which includes Kenton County, designated a special judge from another circuit in the region. This appointment apparently precipitated Appellant's petition. In the petition, Appellant prays primarily for the following relief: (1) that the Kentucky Supreme Court declare the Regional Administration Program unconstitutional as violative of, *inter alia*, the Fourteenth Amendment to the United States Constitution and itself appoint a special judge, and (2) that Judge Godsey, Mr. Elfers and Mr. Hammons be required to explain their handling of the case.

On October 16, 1986, the Kentucky Supreme Court dismissed Appellant's petition stating that the rules of procedure did not authorize the type of action filed by Appellant. Appellant filed a notice of appeal to this Court, citing 28 USC § 1257(1) and (2) as authority therefor.

LACK OF JURISDICTION

A. No Statutory Authority

The statute which Appellant purports gives this Court jurisdiction is 28 USC § 1257(2). Appellant

also argues that if an appeal was not the proper procedure and jurisdiction does not lie pursuant to subsection 2, then the Court should treat his jurisdictional statement as a petition for a writ of certiorari and that jurisdiction would lie pursuant to 28 USC § 1257(3).

Subsection 2 of § 1257 requires that an Appellant challenge the validity of a state statute as being repugnant to the United States Constitution, treaties or laws and that the decision below must be in favor of the statute's validity. Appellant herein is not challenging the validity of a state statute. Rather, he is questioning the validity of the administrative program adopted by the Kentucky Supreme Court, claiming that it is repugnant to various provisions of the United States Constitution.

First, the Kentucky Supreme Court did not address any federal questions in its order. Rather, it held that Appellant had not followed the proper procedure for bringing a mandamus case. The Kentucky Rules of Civil Procedure require that a petition for a writ of mandamus or prohibition against a circuit judge be brought in the Court of Appeals of Kentucky and not the Supreme Court. Civil Rule 76.36. Consequently, there is no decision of the Kentucky Supreme Court upholding the validity of a state statute against a challenge of repugnancy to the United States Constitution, as required by 28 USC § 1257(2).

Secondly, no state statute is involved. The adminstrative procedures governing a state court system has not been deemed a state statute for purposes of

§ 1257. See, *Lathrop* v. *Donohue,* 367 U. S. 820, 6 L. Ed. 2d 1191, 81 S. Ct. 1826 (1961) where it was held that to qualify as a state statute under § 1257 (2) the act must be legislative in nature. The administration of the judiciary is not of a legislative nature.

B. No Federal Question

There is no substantial federal question involved. Appellant's first question substantially alleges that the Regional Administration Program violates the United States Constitution, Article I, Section 1 (legislative power vested in Congress), Article III, Section 1 (judicial power vested in Supreme Court), Article III, Section 2 (Supreme Court to have appellate jurisdiction), Article VI (Constitution and federal statutes supreme law of the land), First Amendment and Fourteenth Amendment. Appellant's jurisdictional statement fails, however, to specify how the administration of the Kentucky courts violates any of the aforementioned provisions.

Appellant's second question appears to assert that the Fourteenth Amendment one-man, one-vote decisions apply to the administration of a state court system. However, the prevailing view is that the one-man, one-vote decisions do not apply to the judiciary. See, *Stokes* v. *Fortson,* 234 F. Supp. 575 (N.D. Ga. 1964); *New York State Assn. of Trial Lawyers* v. *Rockefeller,* 267 F. Supp. 148 (S.D. N.Y. 1967); *Kail* v. *Rockefeller,* 275 F. Supp. 937 (E.D. N.Y. 1967); *Sullivan* v. *Alabama State Bar,* 295 F. Supp. 1216 (M.D. Ala. 1969).

Finally, Appellant's third question, regarding whether mandamus is the appropriate remedy under state law to require the county attorney to perform a state ministerial duty, and the fourth question, whether the Kentucky Supreme Court is obligated to investigate allegations of unethical conduct by attorneys, involve no federal question whatsoever. They are strictly matters of state law, and were not raised or presented by Appellant in the Kentucky Supreme Court.

CONCLUSION

Appellant has not demonstrated that the statutes grant jurisdiction to this Court, either pursuant to 28 U.S.C. § 1257 (2) or (3). Appellees respectfully move the Court to dismiss this appeal.

Respectfully submitted,

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MICHAEL HAMMONS
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Counsel for Appellees

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing Motion of Appellees to Dismiss has been mailed first class, postage prepaid to Eddie Thompson, Jr., P.O. Box 1221, Covington, Kentucky 41012 this 2nd day of February, 1987.

NATHAN GOLDMAN
Counsel for Appellees